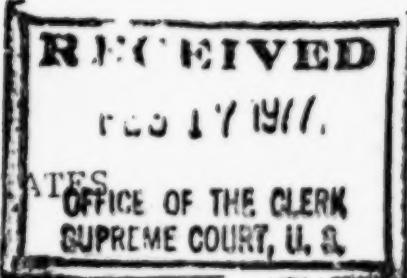


IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976



NO. 76-5206

HARRY ROBERTS,
Petitioner,

-v.-

STATE OF LOUISIANA,
Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

OBJECTION OF PETITIONER TO MOTION FOR LEAVE
TO FILE A BRIEF AS AMICI CURIAE IN SUPPORT
OF RESPONDENT BY AMERICANS FOR EFFECTIVE
LAW ENFORCEMENT, INC.; THE INTERNATIONAL
ASSOCIATION OF CHIEFS OF POLICE, INC.; THE
NATIONAL DISTRICT ATTORNEYS ASSOCIATION, INC.;
AND THE NATIONAL SHERIFFS ASSOCIATION, INC.

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Counsel for Petitioner

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Petitioner Harry Roberts hereby files an objection to the Motion for Leave to File a Brief as Amici Curiae on Behalf of Respondent, by the Americans for Effective Law Enforcement, Inc., et al; and pursuant to Rule 42(3), states the reasons of the petitioner for withholding consent to the filing of this brief:

I.

The State of Louisiana presently has no mandatory death penalty law punishing the murder of police officers. The law under which the petitioner was convicted and sentenced, former La. R.S. §14:30, was amended to exclude mandatory sentences by action of the Louisiana Legislature in 1976. See: La. Acts 1976, No. 657. The reason why Louisiana does not presently have in effect a mandatory death sentence for those convicted of the murder of police officers is due to legislative, and not judicial action. Even in the event that this Court should render a decision herein favorable to such a penalty, such a decision of itself could not

reinstate such a penalty in Louisiana without some legislative act. The proposed amici would more appropriately direct their lobbying to the Legislature of Louisiana, and not to this Court.

II.

Since this case essentially involves only the validity of a mandatory sentencing scheme of one state, and since that scheme is no longer in effect, the arguments proposed by the amici--of a nationwide need for such sentencing provisions--would unjustifiably broaden the scope of the present inquiry beyond the issues necessary to a resolution of this matter, in that the amici would, by their arguments, be seeking from this Court an advisory opinion as to the possible validity of yet unenacted laws. Such an advisory opinion would be beyond the fixed definitions of this Court's powers,¹ and would so broaden the issues as to detract from the real purpose of the case: to consider the validity of a specific prosecution under former La. R.S. §14:30.

III.

Further, the proposed amici have not presented the Court with any reasons to believe that the real issues herein will not be adequately presented by the parties hereto. The purpose of an amicus curiae under Rule 42 is to do more than merely register a general endorsement of a particular party to the case. And unless the proposed amici can ". . . set forth facts or questions of law that have not been, or reasons for believing they will not adequately be, presented by the parties,"² the amici have not demonstrated the need or even the desireability of their involvement. No such showing has been made here.

1. Flast v. Cohen, 392 U.S. 83, 95 (1968); U.S. v. Fruehauf, 365 U.S. 146, 157 (1961); Muskrat v. U.S., 219 U.S. 346, 362 (1911).

2. Rule 42(3).

CONCLUSION

The actual effect of the proposed amici would be a lobbying campaign, which would more properly be directed to the Louisiana Legislature than to this Court. Further, since Louisiana no longer has a mandatory death sentence in effect, such as that under which the petitioner was sentenced, the involvement of the proposed amici would unjustifiably broaden the scope of the present case, so as to give the decision herein on such a broad ground an unprecedentedly advisory character. Finally, these proposed amici have failed to set forth reasons why the relevant issues herein will not be adequately addressed by the parties.

It is for these reasons that the petitioner respectfully urges the Court to deny the motion of these proposed amici for leave to file a brief herein.

All of which is most respectfully submitted.



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